Silvers v. Google, Inc. Doc. 7 Att. 7

EXHIBIT G

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IN THE CIRCUIT COURT OF MARYLAND

FOR MONTGOMERY COUNTY

Stelor Productions LLC

Plaintiff

v. CASE NUMBER: 272024-V

Lindsey R. Miller

Defendant

06 OCT 16 PM
FILED
HOLLY D. RUHL
CLERKS OFFICE
MONTGOMERY CO. MD

AMENDED COMPLAINT

Plaintiff, Stelor Productions LLC by and through the undersigned counsel, submits the following as its Amended Complaint for monetary and injunctive relief against Defendant, Lindsey R. Miller and as grounds therefore states as follows:

PARTIES

Stelor Productions LLC ("Stelor") is a Delaware Limited Liability Company with principal offices located at 14701 Mockingbird Drive, Darnestown, Maryland, 20874.

Lindsey R. Miller ("Miller") is an individual of legal age residing in Rockville, Maryland.

JURISDICTION AND VENUE

This Court has personal jurisdiction over Miller since she resides in Maryland and engages in numerous personal and business activities in Maryland. The breach of contract, damages, tortious activities and tortious injury caused by Miller, occurred within the State of Maryland.

This Court has subject matter jurisdiction over this action pursuant to the statutory and common laws of Maryland. The breach of contract, damages, tortious activities and tortious injury caused by Miller, occurred within the State of Maryland.

Venue is proper in Montgomery County because a substantial part of the events and activities giving rise to Stelor's claims occurred and are situated in this Judicial District.

FACTS

1. Stelor engages in the production of various creative works, including but not limited to, child-safe websites, videos, artwork of a cartoon nature, and high-end educational toys for children.

2. Stelor's goals include the improvement in a child's ability to retain and maintain basic non-commercialized messages about themselves and their relationships with others.

3. On or about November 20, 2005 Miller entered into a contractual agreement with Stelor entitled "NONDISCLOSURE AGREEMENT" (hereinafter "Nondisclosure Agreement" which provides as follows:

> Definition of Confidential Information. "Confidential Information" means any oral, written, graphic or machine-. readable information including, but not limited to, that which relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, business plans, agreements with third parties, services, customers, customer lists and details of business discussions, marketing or finances of the disclosing party, which Confidential Information is designated in writing to be confidential or proprietary, or if given orally, is reasonably understood to be proprietary and confidential.
>
> Nondisclosure of Confidential Information. The Recipient agrees not to use any Confidential Information disclosed to it by Stelor for its own use or for any purpose other than to carry .out discussions concerning, and the undertaking of, the Relationship. The Recipient shall not disclose nor permit disclosure of any Confidential Information of Stelor to third parties or to employees of The Recipient, other than directors, officers, employees, Consultants and agents (a) who are required to have the information in order to carry out the discussions regarding the Relationship; (b) whose duties justify access to such Confidential Information; and (c) who are bound by a nondisclosure agreement or confidentiality obligations consistent with this Agreement. The Recipient agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Stelor's Confidential Information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that The Recipient utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. The Recipient agrees to notify Stelor in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Stelor's Confidential Information which may come to The Recipient's attention, and will cooperate with Stelor for any proceeding against any third parties necessary to protect Stelor's rights with respect of the Confidential Information.

4. On or about November 3, 2005 Miller entered into a contractual agreement with Stelor entitled "EMPLOYEE CONFIDENTIALITY AND ASSIGNMENT OF INTELLECTUAL PROPERTY AGREEMENT" (hereinafter "Confidentiality Agreement" which provides as follows:

> Confidential Information. I understand that my employment by the Company creates a relationship of confidence and trust with respect to any information of a confidential or secret nature that may be disclosed to me by the Company or to which I am exposed that relates to the business of the Company or to the business of any parent, subsidiary, affiliate, customer or supplier of the Company or any other party with whom the Company agrees to hold information of such party in confidence. Such Confidential Information includes but is not limited to Intellectual Property, marketing plans, product plans, business strategies, financial information, forecasts, personnel information and customer lists.
>
> Confidentiality. At all times, both during my employment and after its termination, I will keep and hold all such Confidential information in strict confidence and trust, and I will not use or disclose any of such Confidential Information without the prior written consent of the Company, except as may be necessary to perform my duties as an employee of the Company for the benefit of the Company.

5. On or about May 11, 2006 at approximately 4:00 PM in her home in Rockville, Maryland, Miller met with and engaged in conversations with Marcia DeSouza ("DeSouza") and a man by the name of Drew ("Drew" - his last name is unknown).

6. During the meeting Miller engaged in telephone conversations with Steven A. Silvers.

7. During the meeting Miller communicated information to Steven A. Silvers, to DeSouza and to Drew (hereinafter "Communicated Statements").

8. In the Communicated Statements Miller made statements containing information about individuals who were, at that time, personnel of Stelor.

9. In the Communicated Statements Miller made statements containing information about individuals who had previously been personnel of Stelor.

10. In the Communicated Statements Miller made statements which included the names of one or more individuals who have been personnel of Stelor ("Named Personnel").

11. In the Communicated Statements Miller made statements describing the activities of the Named Personnel.

12. In the Communicated Statements Miller made statements providing information about the Named Personnel.

13. In the Communicated Statements Miller made statements about the Named Personnel that were derogatory in nature.

14. In the Communicated Statements Miller made statements which alleged improper activities of Stelor management personnel in the management and interactions with Stelor employees.

15. In the Communicated Statements Miller made statements describing the business activities of Stelor including statements about what she believed to be the interactions with Steven A. Silvers and his company who she believed to be the licensor of intellectual property to Stelor.

16. In the Communicated Statements Miller made statements describing the activities of certain personnel of Stelor including information about whether Stelor personnel had made public the musical accomplishments of Elan Eisenberg, a previous Stelor employee.

17. In the Communicated Statements Miller made statements describing the business strategies of Stelor including strategies with respect to its interaction with Steven A. Silvers and his company.

18. Miller did not have prior written consent of Stelor to make the statements contained in the Communicated Statements.

19. Miller knew that it was not necessary to make the Communicated Statements in order to perform her duties as an employee of Stelor for the benefit of Stelor.

20. The hearing of the Communicated Statements by an employee of Stelor resulted in Stelor's employees devoting numerous hours to the discussion, planning and other work in order to plan how to deal with the Communicated Statements and the consequences and possible consequences of the hearing of the Communicated Statements by individuals.

21. The hearing of the Communicated Statements by an employee of Stelor resulted in Stelor's agents, officers, directors, consultants and attorneys devoting numerous hours to the discussion, planning and other work in order to plan how to deal with the Communicated Statements and the consequences and possible consequences of the hearing of the Communicated Statements by individuals.

22. Miller's making of the Communicated Statements and the hearing of the Communicated Statements by an employee of Stelor resulted in numerous expenses and costs that would not have been incurred if Miller had not made the Communicated Statements.

23. Miller's making of the Communicated Statements and the hearing of the Communicated Statements by an employee of Stelor resulted in Stelor's agents, officers, directors, consultants and attorneys devoting numerous hours to the discussion, planning and other work in order to plan how to deal with the Communicated Statements and the consequences and possible consequences of the hearing of the Communicated Statements by individuals.

24. Miller did not notify Stelor in writing of her making of the Communicated Statements or the hearing of the Communicated Statements by Drew, DeSouza or Silvers.

25. Miller did not notify Stelor in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Stelor's confidential information which came to Miller's attention.

26. Miller did not take all reasonable measures to protect the secrecy of and avoid disclosure or use of Stelor's confidential information (as defined in the Nondisclosure Agreement) in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under the Nondisclosure Agreement to have any such information.

27. During or around the period May 1, 2006 to May 25, 2006 Miller made statements which she knew were being recorded ("Recorded Statements").

28. Miller made the Recorded Statements with the knowledge that Steven A. Silvers ("Silvers") heard the statements.

29. Miller made the Recorded Statements with the knowledge that Silvers intended to cause the Recorded Statements to be heard by at least one other individual.

30. Miller made the Recorded Statements with the knowledge that Silvers intended to cause the Recorded Statements to be heard by two or more other individuals.

31. Miller made the Recorded Statements with the intent to cause the Recorded Statements to be heard by at least one other individual.

32. Miller made the Recorded Statements with the intent to cause the Recorded Statements to be heard by two or more other individuals.

33. In the Recorded Statements Miller made statements containing information about individuals who were, at that time, personnel of Stelor.

34. In the Recorded Statements Miller made statements containing information about individuals who had previously been personnel of Stelor.

35. In the Recorded Statements Miller made statements which included the names of one or more individuals who have been personnel of Stelor ("Named Personnel").

36. In the Recorded Statements Miller made statements describing the activities of the Named Personnel.

37. In the Recorded Statements Miller made statements providing information about the Named Personnel.

38. In the Recorded Statements Miller made statements about the Named Personnel that were derogatory in nature which statements included information about what Miller believed to be improper activities of Stelor management personnel in the management and interaction with Stelor employees. Miller could have reasonably anticipated that the disclosure of the information contained in the Recorded Statements could interfere with the marketing of Stelor's products and services and interfere with Stelor's business relationships with the purchasers of its services and products.

39. In the Recorded Statements Miller made statements describing the business activities of Stelor which statements included information about the management activities and interactions of Stelor's management personnel with Stelor employees. The statements included information about what Miller believed to be improper activities of management personnel.

40. In the Recorded Statements Miller made statements describing the activities of certain personnel of Stelor. The statements included information about what Miller believed to be improper activities of management personnel.

41. Miller did not have prior written consent of Stelor to make the statements contained in the Recorded Statements.

42. Miller knew that it was not necessary to make the Recorded Statements in order to perform her duties as an employee of Stelor for the benefit of Stelor.

43. The hearing of the Recorded Statements by an employee of Stelor resulted in Stelor's employees devoting numerous hours to the discussion, planning and other work in order to plan how to deal with the Recorded Statements and the consequences and possible consequences of the hearing of the Recorded Statements by individuals.

44. The hearing of the Recorded Statements by an employee of Stelor resulted in Stelor's agents, officers, directors, consultants and attorneys devoting numerous hours to the discussion, planning and other work in order to plan how to deal with the Recorded Statements and the consequences and possible consequences of the hearing of the Recorded Statements by individuals.

45. Miller's making of the Recorded Statements and the hearing of the Recorded Statements by an employee of Stelor resulted in numerous expenses and costs that would not have been incurred if Miller had not made the Recorded Statements.

46. The hearing of the Recorded Statements by an employee of Stelor resulted in Stelor's agents, officers, directors, consultants and attorneys devoting numerous hours to the discussion, planning and other work in order to plan how to deal with the Recorded Statements and the consequences and possible consequences of the hearing of the Recorded Statements by individuals.

47. Miller did not notify Stelor in writing of her making of the Recorded Statements or the hearing of the Recorded Statements by Silvers.

48. Miller did not notify Stelor in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Stelor's confidential information which may have come to Miller's attention.

49. Miller did not take all reasonable measures to protect the secrecy of and avoid disclosure or use of Stelor's confidential information (as defined in the Nondisclosure Agreement) in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under the Nondisclosure Agreement to have any such information.

50. Miller intended and could reasonably anticipate that as a result of her making of the Recorded Statements Stelor would incur numerous expenses and costs that would not have been incurred if Miller had not made the Recorded Statements.

51. Stelor did, in fact, incur numerous expenses and costs that would not have been incurred if Miller had not made the Recorded Statements.

52. During the meeting in her home on or about May 11, 2006 at approximately 4:00 PM, Miller met with and engaged in conversations with DeSouza and Drew during which there were discussions and telephone conversations with Silvers on the topic of the initiation of a lawsuit against Stelor.

53. During said meeting Miller engaged in telephone conversations with Steven A. Silvers.

54. Miller engaged in additional telephone discussions with Steven A. Silvers prior to and subsequent to the meeting on May 11, 2006.

55. During telephone conversations on or about May 11, 2006 with Steven A. Silvers Miller entered into one or more agreements or understandings with Steven A. Silvers to engage in certain acts that Miller knew would result in legal damage to Stelor.

56. During telephone conversations on or about May 11, 2006 with Steven A. Silvers Miller entered into one or more agreements or understandings with Steven A. Silvers for the knowing purpose of willfully, fraudulently, tortiously and maliciously injuring of Stelor' business and business relationships with resulting legal damage to Stelor.

57. During the telephone conversations on or about May 11, 2006 with Steven A. Silvers Miller entered into one or more agreements or understandings with Steven A. Silvers for the knowing purpose of wrongful, fraudulent and tortious conduct by knowingly offering substantial assistance, aid and encouragement in order to cause several individuals to fraudulently conspire to initiate a lawsuit (with Miller as one of the plaintiffs) against Stelor and for Miller and the other plaintiffs to provide false and fraudulent testimony causing legal damage to Stelor. During the meeting in her home Miller attempted to persuade Marcia DeSouza to be one of the plaintiffs in the lawsuit against Stelor and to make false statements as a part of the lawsuit process.

58. Miller aided and abetted Steven A. Silvers and other individuals to engage in wrongful, fraudulent and tortious conduct by knowingly offering assistance, aid and encouragement in order to cause said individuals to fraudulently conspire to initiate a lawsuit (with Miller as

one of the plaintiffs) against Stelor and for Miller and the other plaintiffs to provide false and fraudulent testimony causing legal damage to Stelor.

59. The hearing about the activities of Miller by an employee of Stelor resulted in Stelor's employees devoting numerous hours to the discussion, planning and other work in order to plan how to deal with the plans and activities of Miller and to deal with the possible consequences of lawsuit against Stelor that was being planned.

60. The hearing about the activities of Miller by an employee of Stelor resulted in Stelor's agents, officers, directors, consultants and attorneys devoting numerous hours to the discussion, planning and other work in order to plan how to deal with the plans and activities of Miller and to deal with the possible consequences of lawsuit against Stelor that was being planned.

61. The hearing about the activities of Miller by an employee of Stelor resulted in numerous expenses and costs that would not have been incurred if Miller had not entered into one or more agreements or understandings with Steven A. Silvers for the knowing purpose of wrongful, fraudulent and tortious conduct by knowingly offering substantial assistance, aid and encouragement in order to cause several individuals to fraudulently conspire to initiate a lawsuit (with Miller as one of the plaintiffs) against Stelor and for Miller and the other plaintiffs to provide false and fraudulent testimony causing legal damage to Stelor.

COUNT I
BREACH OF CONTRACT
FAILURE TO MAINTAIN THE CONFIDENTIALITY OF CERTAIN INFORMATION

a. Stelor re-alleges the allegations contained in paragraphs (1) through (61) above and incorporates them herein by reference as if included herein.

b. Miller, personally and/or in complicity with others at Miller's direction, intentionally and willfully breached certain contractual obligations by failing to maintain the confidentiality of certain information, to-wit:

    i. Miller intentionally provided and disclosed certain confidential information to one or more other individuals.

ii. Miller intentionally made or permitted to be made certain audio recordings of herself orally disclosing, describing and providing details of certain confidential information. Miller's intent and understanding was that said audio recordings would be made available to one or more other individuals thereby resulting in the disclosure of the confidential information to innumerable other individuals.

c. Miller's intentional failure to maintain the confidentiality of certain information and Miller's intentional disclosure of certain confidential information proximately resulted in substantial legal damage to Stelor.

COUNT II
BREACH OF CONTRACT
FAILURE TO PERFORM CERTAIN CONTRACTUAL OBLIGATIONS

a. Stelor re-alleges the allegations contained in paragraphs (1) through (61) above and incorporates them herein by reference as if included herein. Miller, personally and/or in complicity with others at their direction, intentionally and willfully breached certain contractual obligations by failing to perform certain obligations, to-wit:

i. Miller failed to take action to protect the confidential information

ii. Miller failed to take all reasonable measures to protect the secrecy of and avoid disclosure or use of the confidential information as specifically required by the Nondisclosure Agreement.

iii. Miller failed to notify Stelor of any actual or suspected misuse of the confidential information as specifically required by the Nondisclosure Agreement.

iv. Miller failed to keep and hold the confidential information in strict confidence as specifically required by the Confidentiality Agreement.

b. The breach of the contractual obligations proximately resulted in substantial legal damage to Stelor.

III
BREACH OF CONTRACT
ENGAGING IN CERTAIN PROHIBITED ACTIVITIES

a. Stelor re-alleges the allegations contained in paragraphs (1) through (61) above and incorporates them herein by reference as if included herein.

b. Miller, personally and/or in complicity with others at their direction, intentionally and willfully breached certain contractual obligations by engaging in certain prohibited activities, to-wit:

  i. Miller intentionally provided and disclosed certain confidential information to numerous other individuals.

  ii. Miller intentionally made or permitted to be made certain audio recordings of herself orally disclosing, describing and providing details of certain confidential information. Miller's intent and understanding was that said audio recordings would be made available to numerous other individuals thereby resulting in the disclosure of the confidential information to innumerable other individuals.

  iii. Miller intentionally used the confidential information for her own use as specifically prohibited by the Nondisclosure Agreement.

  iv. Miller intentionally disclosed the confidential information to third parties as specifically prohibited by the Nondisclosure Agreement.

c. The breach of the contractual obligations proximately resulted in substantial legal damage to Stelor.

COUNT IV
TORTIOUS PUBLICATION OF CERTAIN CONFIDENTIAL INFORMATION

a. Stelor re-alleges the allegations contained in paragraphs (1) through (61) above and incorporates them herein by reference as if included herein.

b. Miller, personally and/or in complicity with others at their direction, intentionally and willfully engaged in the disclosure and tortious distribution and publication of certain information, to-wit:

   i. Miller intentionally made and/or permitted to be made certain audio recordings of herself orally disclosing, describing and providing details of certain confidential information and making derogatory statements about Stelor personnel.

   ii. Miller's intent and understanding was that said audio recordings would be made available to other individuals thereby resulting in the publication and disclosure of the confidential information to innumerable other individuals.

c. Miller's tortious publication of certain confidential information proximately resulted in substantial legal damage to Stelor.

COUNT V
TORTIOUS INTERFERENCE
WITH BUSINESS RELATIONSHIPS

a. Stelor re-alleges the allegations contained in paragraphs (1) through (61) above and incorporates them herein by reference as if included herein.

b. Miller intentionally and willfully engaged in numerous acts that improperly interfered with the business/economic relationships and business expectations of Stelor, to wit:

   iii. Miller intentionally provided and disclosed certain confidential information to other individuals.

   iv. Miller intentionally made or permitted to be made certain audio recordings of herself orally disclosing, describing and providing details of certain confidential information. Miller's intent and understanding was that said audio recordings would be made available to numerous other individuals thereby resulting in the disclosure of the confidential information to innumerable other individuals.

v. Miller made certain agreements and engaged in certain activities with Steven A. Silvers that were intended to cause damage to Stelor and could reasonably be anticipated to cause damage to Stelor.

vi. Miller's actions were intended to interfere with Stelor's business relationships.

vii. Millers' actions were calculated to cause damage to Stelor in its lawful business.

viii. Millers' actions were and are done with the unlawful and malicious purpose of causing damage to Stelor.

b. Miller's unauthorized interference with Stelor' business and economic relationships proximately resulted in legal damage to Stelor.

COUNT VI
CONSPIRACY

a. Stelor re-allege the allegations contained in paragraphs (1) through (61) above and incorporates them herein by reference as if included herein.

b. Miller entered into one or more agreements or understandings with Steven A. Silvers to engage in certain acts that the Miller knew would result in the legal damage to Stelor.

c. Miller entered into one or more agreements or understandings with Steven A. Silvers for the knowing purpose of willfully, fraudulently, tortiously and maliciously injuring Stelor' business and business relationships with resulting legal damage to Stelor.

d. Miller entered into one or more agreements or understandings with Steven A. Silvers for the knowing purpose of wrongful, fraudulent and tortious conduct by knowingly offering substantial assistance, aid and encouragement in order to cause said individuals to fraudulently conspire to initiate a lawsuit against Stelor and to provide false and fraudulent testimony causing legal damage to Stelor.

e. Miller's unauthorized interference with Stelor's business and economic relationships proximately resulted in legal damage to Stelor.

COUNT VII
AIDING AND ABETTING

a. Stelor re-allege the allegations contained in paragraphs (1) through (61) above and incorporates them herein by reference as if included herein.

b. Miller's aiding and abetting activity is in violation of common law rights of Stelor and in furtherance of Miller's intent to inflict substantial economic injury on Stelor.

c. Miller aided, abetted and encouraged and continued to aid, abet and encourage certain individuals to engage in wrongful, fraudulent and tortious conduct by knowingly offering substantial assistance, aid and encouragement in order cause said individuals to fraudulently conspire to initiate a lawsuit and to provide false and fraudulent testimony causing legal damage to Stelor.

DAMAGE

a. Stelor re-alleges the allegations contained in paragraphs (1) through (61) above and incorporates them herein by reference as if included herein.

b. As a result of the damage caused by Miller's unlawful acts as plead in the above counts, Stelor has been irreparably damaged.

c. As a result of this damage, unless the Miller is restrained and enjoined from said unlawful conduct, Miller will continue to act. It is difficult to ascertain the amount of compensation that could afford Stelor adequate relief for Miller's continuing unlawful acts.

d. Stelor's remedy at law is, therefore, inadequate to compensate for the injuries threatened.

RELIEF

WHEREFORE, Stelor requests entry of judgment in its favor against Miller:

I. Granting injunctive relief against the Miller and upon those persons in active concert or participation with Miller who receive actual notice of the order by personal service or otherwise, enjoining them from directly or indirectly:

a. Aiding, abetting or encouraging any individuals to engage in wrongful and tortious conduct by knowingly offering substantial assistance, aid and encouragement in order cause said individuals to fraudulently conspire to initiate a lawsuit and to provide false and fraudulent testimony which could cause legal damage to Stelor.

b. Engaging in any acts that intentionally or improperly interfere with the business/economic relationships and business expectations of Stelor which could result in legal damage to Stelor.

c. Entering into any agreements or understandings with other individuals for the knowing purpose of willfully, tortiously or maliciously injuring Stelor's business and/or business relationships.

d. Aiding, abetting or encouraging any individuals to engage in the disclosure or publication of confidential information.

e. Entering into any agreements or understandings with any other individuals to engage in any acts which could result in the disclosure or publication of confidential information.

II. Awarding Stelor statutory, compensatory, and punitive damages, and restitution in an amount to be proven at trial (of at least $50,000), caused by the Millers' unlawful actions described herein.

III. Imposing a constructive trust on all real and personal property purchased by Miller with funds derived from Miller's unlawful activities described herein.

IV. Awarding Stelor attorneys' fees and costs associated with prosecuting this action; and

V. Granting Stelor such other or additional relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Stelor request a jury trial on all matters for which a jury may be requested.

Respectfully Submitted this 16th day of October 2006

By:

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S. Sturgeon, Jr., Esquire
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CERTIFICATE OF SERVICE

I certify that on October 16, 2006 copies of this Amended Complaint were duly served by U.S. Mail on:

Michael Worsham, Esquire
1916 Cosner Road
Forest Hill, Md 21050

By: ____________________
Counsel for Plaintiff, Stelor Productions LLC
S. Sturgeon, Jr., Esquire